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JUN 26 1998

Federal Communications Commission
Office of Secretary

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JUN 26 1998
CONSULTING ENGINEERS
SIAMAK HARANDI
DEAKIN LAUER

EX PARTE OR LATE FILED

June 26, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, DC 20554

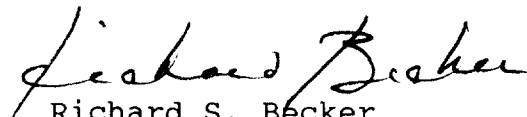
Re: CC Docket No. 96-98
EX PARTE PRESENTATION

Dear Mr. Roman Salas:

Pursuant to 47 C.F.R. §1.1206(b)(1), transmitted herewith on behalf of TSR Wireless LLC ("TSR Wireless") are two (2) paper copies of a written ex parte presentation submitted by TSR Wireless simultaneously herewith related to the matters addressed in the above-referenced rulemaking proceeding. This proceeding is currently pending as a result of outstanding petitions for reconsideration of the Commission's decision in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report And Order, 11 FCC Rcd 15499 (1996). Please include these copies in the public record for the above-referenced proceeding.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,



Richard S. Becker
Attorney for TSR Wireless LLC

Enclosures

No. of Copies 1000
LHA ABODE

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Federal Communications Commission
Office of Secretary

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HAND DELIVERED

Jane E. Jackson, Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.; Room 518
Washington, DC 20554

VIA OVERNIGHT COURIER

Gary Evenson, Assistant Administrator
Telecommunications Division
Public Service Commission of Wisconsin
610 North Whitney Way
Madison, WI 53705

Re: Opposition To Termination Of
Reverse Billing By Ameritech
In The State Of Wisconsin

Dear Ms. Jackson and Mr. Evenson:

TSR Wireless LLC ("TSR Wireless"), by its attorneys, hereby opposes the planned termination by local exchange carrier ("LEC"), Ameritech, of existing "reverse billing" interconnection service currently offered to Commercial Mobile Radio Service ("CMRS") licensees, including CMRS paging provider TSR Wireless, in the State of Wisconsin. In opposition, the following is respectfully shown.

I. Background

As the result of a recent Federal Communications Commission ("FCC") approved merger transaction, TSR Wireless acquired the CMRS paging facilities and FCC authorizations previously held by American Paging, Inc. and its subsidiaries (collectively, "API"), including paging facilities and FCC authorizations in the State of Wisconsin.¹ API, and now TSR Wireless, have for some time obtained interconnection services and facilities from Ameritech for use in

¹See, e.g., FCC File No. 21113-CD-AL-98.

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Gary A. Evenson, Assistant Administrator
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the State of Wisconsin. As part of those interconnection services and facilities, TSR Wireless obtains from Ameritech reverse billing service. Reverse billing, sometimes referred to by other LECs as "wide-area calling," is a service provided by Ameritech pursuant to which a landline telephone subscriber can place a call to a TSR Wireless paging unit within LATA boundaries where the landline telephone subscriber pays no charge whatsoever for placing the call. TSR Wireless has been advised that this reverse billing service will be terminated by Ameritech in Wisconsin no later than December 31, 1998.

By this letter, TSR Wireless opposes Ameritech's proposed termination of reverse billing service. In point of fact, TSR Wireless is currently involved in a dispute with Ameritech regarding the entire TSR Wireless - Ameritech interconnection relationship in the State of Wisconsin. The following specifies all relevant facts:

- By letter dated May 4, 1998 ("TSR Wireless May 4 Letter"), TSR Wireless Director of Telecommunications, Kathryn Murray ("Murray"), advised Ameritech that certain types of charges for interconnection services and facilities imposed by Ameritech on TSR Wireless for use in connection with TSR Wireless's CMRS paging operations violate the Telecommunications Act of 1996² and relevant FCC Rules and decisions. Murray made clear that TSR Wireless would not pay these charges and Murray requested credits for these charges back to the effective dates of relevant FCC decisions. A copy of the TSR Wireless May 4 Letter is attached hereto as Attachment 1.
- By letter dated May 26, 1998 ("Ameritech May 26 Letter"), Ameritech counsel, Mark R. Ortlieb, Esquire ("Ortlieb"), responded to the TSR Wireless May 4 Letter and contested TSR Wireless's position. A copy of the Ameritech May 26 Letter is attached hereto as Attachment 2.
- By letter dated June 5, 1998 ("TSR Wireless June 5 Letter"), undersigned counsel for TSR Wireless responded to the Ameritech May 26 Letter. A copy of the TSR Wireless June 5 Letter is attached hereto as Attachment 3. In the TSR Wireless June 5 Letter:

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), codified as amendments to the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §151 et seq.

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- TSR Wireless reiterated its position that the charges that Ameritech is imposing for interconnection services and facilities violate the 1996 Act and relevant FCC Rules and decisions.
- TSR Wireless indicated its understanding that Ameritech had unilaterally begun refusing to provide additional interconnection services and/or facilities unless and until TSR Wireless negotiates, arbitrates (if necessary), and executes a new interconnection agreement with Ameritech pursuant to the provisions of Sections 251 and 252 of the Act.³
- Ameritech's refusal to provide additional interconnection services and/or facilities first arose in the specific context of Ameritech's decision to terminate all reverse billing service in the State of Wisconsin effective December 31, 1998. Specifically, in an attempt to ameliorate the significant, adverse consequences that Ameritech's termination of reverse billing will cause to TSR Wireless paging subscribers, TSR Wireless had hoped to obtain from Ameritech Type 2 NXX blocks of DID numbers for all Ameritech rate centers serving areas where TSR Wireless subscribers currently rely upon Ameritech's reverse billing service.⁴ Once TSR Wireless obtains the New NXX Codes from Ameritech, TSR Wireless can reassign to TSR Wireless's reverse billing paging subscribers DID numbers that are local to each subscriber. This reassignment will, to some extent, allow TSR Wireless paging subscribers to continue to receive service in a similar fashion to the service provided in conjunction with Ameritech's reverse billing service. This reassignment process will, however, require that each affected TSR Wireless paging subscriber change the telephone number assigned to its paging unit.⁵ As a

³For ease of reference, the type of interconnection agreement requested by Ameritech will be referred to hereinafter as a "Section 252 Agreement."

⁴The NXX codes that TSR Wireless requires to ameliorate the adverse effects of Ameritech's termination of reverse billing will be referred to herein as the "New NXX Codes."

⁵This reassignment process will also result in calling parties having to pay a local call charge when they call a TSR Wireless paging subscriber assigned a telephone number from one of the New

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result, TSR Wireless had hoped to obtain the New NXX Codes and give TSR Wireless paging subscribers significant advance notice of the change in pager number that will result from Ameritech's termination of reverse billing as of December 31, 1998. When TSR Wireless requested the New NXX Codes, however, Ameritech advised TSR Wireless that Ameritech would under no circumstances provide the New NXX Codes, or any new, modified or additional interconnection services or facilities, unless and until TSR Wireless executes a Section 252 Agreement with Ameritech. It is TSR Wireless's understanding that Ameritech's refusal to provide the New NXX Codes is not the result of TSR Wireless's above-described refusal to pay charges for interconnection services and facilities that TSR Wireless believes are prohibited by the 1996 Act and FCC Rules and decisions. Rather, it is TSR Wireless's understanding that Ameritech's refusal to provide the New NXX Codes is based on a separate rationale, i.e., that TSR Wireless must execute a Section 252 Agreement before Ameritech will provide any new, modified or additional interconnection services or facilities.

- By Memorandum dated June 11, 1998 ("Ameritech June 11 Memo"), from Dawn Wantuch, Ameritech/Wisconsin Code Administrator, Ameritech advised TSR Wireless that Ameritech has temporarily suspended code assignments in the 414 Numbering Plan Area ("NPA") in the State of Wisconsin.⁶ A copy of the Ameritech June 11 Memo is attached hereto as Attachment 4.
- Ameritech's unwillingness to provide the New NXX Codes based on TSR Wireless's refusal thus far to sign a Section 252 Agreement has precluded TSR Wireless from taking any action to ameliorate the adverse effects of Ameritech's planned termination of reverse billing service. Now that NXX codes in the 414 NPA have been depleted, even if Ameritech agreed to provide New NXX Codes to TSR Wireless, there would be no New NXX Codes in the 414 NPA to assign to TSR Wireless.

NXX Codes. Under Ameritech's existing reverse billing, a calling party incurs no charge whatsoever for placing a call to a TSR Wireless paging subscriber.

⁶Although there are other NPA's in the State of Wisconsin, approximately forty-five percent (45%) of TSR Wireless's existing Wisconsin subscribers are in the 414 NPA.

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- TSR Wireless has researched whether Ameritech's planned termination of reverse billing has been opposed before either the FCC or the Public Service Commission of Wisconsin ("PSCW"). TSR Wireless determined that:
 - By letter dated February 16, 1998 ("PSCW February 16 Letter"), from Mr. Evenson to Mr. James D. Schlichting, then chief of the FCC's Competitive Pricing Division, Common Carrier Bureau, the PSCW requested FCC "clarification and amplification" as to whether Ameritech's planned termination of reverse billing is "mandated" by Section 51.703(b) of the FCC's Rules as alleged by Ameritech. A copy of the PSCW February 16 Letter is attached hereto as Attachment 5.
 - By letter dated March 2, 1998 ("Ameritech March 2 Letter") from Scott T. VanderSanden, Ameritech's Director - Wholesale, to Mr. Evenson, Ameritech reiterated its position that Section 51.703(b) of the FCC's Rules requires termination of reverse billing as planned by Ameritech. A copy of the Ameritech March 2 Letter is attached hereto as Attachment 6.

Ameritech's refusal to timely provide the New NXX Codes to TSR Wireless, the now-existing inability to acquire any NXX codes in the 414 NPA and Ameritech's ongoing refusal to provide new, additional or modified interconnection services or facilities until a Section 252 Agreement is executed all combine to make it impossible for TSR Wireless to mitigate the adverse consequences to TSR Wireless and its subscribers that will be caused by Ameritech's planned termination of reverse billing as of December 31, 1998. As a result, by this letter, TSR Wireless hereby seeks immediate action by the FCC and PSCW to prevent Ameritech from terminating reverse billing as of December 31, 1998.

**II. Termination Of Reverse Billing
Is NOT Mandated By Section 51.703(b)
And Reverse Billing Should Be Maintained**

Section 51.703(b) of the FCC's Rules provides that:

A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

47 C.F.R. §51.703(b).

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Section 51.703(b) was adopted by the FCC in its August, 1996, Local Competition Order.⁷ The FCC specifically stated that:

We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

Local Competition Order, 11 FCC Rcd at 16016 (emphasis added).

This and other FCC regulations governing interconnection of CMRS systems have been expressly upheld by the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") as valid interpretations by the FCC not only of Section 251(b)(5) of the Act (as specified in the Local Competition Order), but also as valid interpretations of the various additional statutory provisions that provide the FCC with broad jurisdiction over CMRS.⁸

⁷Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report And Order, 11 FCC Rcd 15499, 16016, 16027 (1996) (hereinafter "Local Competition Order"), recon. 11 FCC Rcd 13042 (1996), second recon., 11 FCC Rcd 19738 (1996), third recon., 12 FCC Rcd 12460 (1997), vacated in part, Iowa Utilities Board v. FCC, 120 F.3d 753, as amended on rehearing 10/14/97 (8th Cir. 1997) (hereinafter "Iowa Utilities"), cert. granted on other grounds, 66 USLW 3387 (U.S. Jan. 26, 1998) (Nos. 97-286, et al.).

⁸The Eighth Circuit held that:

Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rate charges by [CMRS] providers, ..., and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the commission has the authority to issue the rules of special concern to

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Nothing in this regulation, the Local Competition Order or the Eighth Circuit's decision in Iowa Utilities "mandates" or otherwise requires that LECs like Ameritech terminate longstanding reverse billing arrangements. The new interconnection regime adopted in the 1996 Act and the corresponding FCC regulations require changes to the way in which LECs charge CMRS paging carriers for reverse billing arrangements, but these provisions do not require that LECs terminate this service. Ameritech's allegation in the Ameritech March 2 Letter that it is required by Section 51.703(b) to terminate reverse billing is simply false. In this regard, TSR Wireless remains willing to discuss with Ameritech a revision to Ameritech's reverse billing rate structure so that it properly takes into consideration the FCC's requirement that LECs must deliver their traffic to the CMRS paging carrier's network "without

CMRS providers, i.e., 47 C.F.R. §§51.701, 51.703, 51.709(b), 51.711, 51.715(d) and 51.717, but only as these provisions apply to CMRS providers. Thus, rules 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context.

Iowa Utilities, 120 F.3d at n.21 (citations omitted).

The FCC itself made clear in the Local Competition Order the broad extent of its jurisdiction over CMRS interconnection when it held that:

Sections 251, 252, 332 and 201 are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable and fair. It is consistent with the broad authority of these provisions to hold that we may apply sections 251 and 252 to LEC-CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.

Local Competition Order, 11 FCC Rcd at 16005-16006.

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charge".⁹ Revision of Ameritech's rate structure for reverse billing does not, however, require termination of reverse billing in its entirety.

In short, Ameritech has provided no valid basis for terminating reverse billing. Had Ameritech provided the New NXX Codes to TSR Wireless when originally requested, TSR Wireless could have accepted Ameritech's termination of reverse billing even though Ameritech's action would have required reassignment of telephone numbers to TSR Wireless subscribers and resulted in local call charges to calling parties who previously incurred no charge. Unfortunately, Ameritech's refusal to provide the New NXX Codes based on the unjustifiable position that TSR Wireless must sign a Section 252 Agreement has delayed and thus far prevented TSR Wireless from obtaining the New NXX Codes throughout the State of Wisconsin to ameliorate the adverse effects of termination of reverse billing. Moreover, during this delay, NXX codes in the 414 NPA have been depleted to the point where no new NXX codes are being assigned. As a result, in the 414 NPA, even if Ameritech modifies its position, TSR Wireless cannot obtain the New NXX Codes that would allow TSR Wireless reverse billing subscribers to continue to obtain a service that is a close approximation of the service that they currently obtain under Ameritech's reverse billing program.

These facts leave TSR Wireless no option but to seek immediate FCC and PSCW action to prevent Ameritech from terminating reverse billing in Wisconsin as scheduled on December 31, 1998. Unless new NXX codes become available in the 414 NPA and Ameritech reverses its position and assigns the New NXX Codes to TSR Wireless in the 414 and other NPA's in the State of Wisconsin, termination of reverse billing on December 31, 1998, will immediately result in a drastic modification to the paging service that TSR Wireless has provided and that TSR Wireless subscribers have come to rely upon. Equally as important, TSR Wireless will be placed at a severe competitive disadvantage vis-a-vis other CMRS paging companies in Wisconsin because other carriers have had the opportunity to ameliorate the adverse effects of termination of reverse billing by acquiring new NXX codes throughout the state, including in the 414 NPA prior to the suspension of assignment of NXX codes announced in the June 11 Memo.

TSR Wireless must also emphasize that retention of reverse billing has the added benefit of eliminating the need for TSR Wireless to obtain the New NXX Codes necessary to replicate, to

⁹Local Competition Order, 11 FCC Rcd at 16016.

Jane E. Jackson, Chief
Gary A. Evenson, Assistant Administrator
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some extent, the capabilities of reverse billing. For example, based on TSR Wireless's system configuration and marketing requirements, TSR Wireless will require New NXX Codes for at least eighteen (18) of the numerous Ameritech rate centers in the 414 NPA to approximate the local calling capabilities currently available under reverse billing. Assignment of these New NXX Codes would be unnecessary if reverse billing were maintained.

III. Conclusion

For all of these reasons, TSR Wireless opposes Ameritech's planned termination of reverse billing in the State of Wisconsin. TSR Wireless respectfully requests affirmative action by both the FCC and the PSCW to prevent Ameritech from carrying out its planned reverse billing termination.

In closing, TSR Wireless must reiterate that Ameritech's actions with respect to reverse billing in particular and CMRS paging interconnection in general have severely prejudiced TSR Wireless:

- Contrary to just, fair, reasonable and judicially-affirmed FCC regulations, Ameritech continues to impose prohibited charges for interconnection services and facilities against CMRS paging carrier, TSR Wireless.
- Ameritech's refusal to provide the New NXX Codes or other new, modified or additional interconnection to TSR Wireless unless and until TSR Wireless executes a Section 252 Agreement is unjustified. TSR Wireless readily admits that both CMRS paging carriers and LECs have an obligation to negotiate in good faith the terms and conditions of interconnection agreements like the Section 252 Agreement demanded by Ameritech.¹⁰ Ameritech's ongoing violation of the above-described FCC CMRS interconnection regulations has, however, precluded TSR Wireless from entering into good faith negotiations with Ameritech towards a Section 252 Agreement. In point of fact, Ameritech's violations must be considered to constitute per se bad faith.
- The Ameritech June 11 Memo temporarily suspending assignment of NXX codes in the 414 NPA, coupled with Ameritech's planned termination of reverse billing and Ameritech's refusal to provide the New NXX Codes has been a "one-two punch" to TSR Wireless that preclude TSR Wireless from taking any action to

¹⁰47 U.S.C. §251(c)(1).

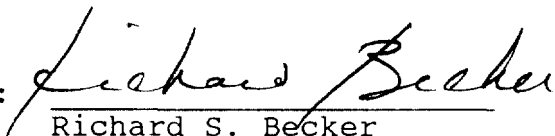
Jane E. Jackson, Chief
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ameliorate the adverse effects of termination of reverse billing.

TSR Wireless respectfully requests that the FCC and the PSCW take immediate action to prevent Ameritech from carrying out its planned termination of reverse billing in the State of Wisconsin.

Respectfully submitted,

TSR WIRELESS LLC

By: 
Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel
Its Attorneys

Attachments

cc: See attached Distribution List

Attachment 1

TSR Wireless May 4 Letter



a TSR PAGING INC. company

400 Kirby Street
Fort Lee, New Jersey 07024
(201) 947-5300

May 4, 1998

Laurie Stencer
Ameritech Information Service
722 N. Broadway, Floor 7
Milwaukee, WI 53202

Re: Commercial Mobile Radio Service Interconnection
Arrangements For TSR Wireless LLC

Dear Ms. Busic:

TSR Wireless LLC ("TSR Wireless") is a Commercial Mobile Radio Service ("CMRS") provider of one-way paging services licensed by the Federal Communications Commission ("FCC"). TSR Wireless was formed as the result of a merger between CMRS carriers, TSR Paging Inc. ("TSR Paging") and American Paging, Inc. and its subsidiaries (collectively, "API"). All FCC licenses of TSR Paging and API have been assigned to TSR Wireless pursuant to FCC authorization. Your company provides interconnection services and facilities to TSR Wireless for use in connection with TSR Wireless's operations as a CMRS provider.

By this letter, TSR Wireless advises you that the following types of charges for interconnection services and facilities are in violation of the Telecommunications Act of 1996¹ and relevant FCC Rules adopted in the FCC's First Report And Order² and Second Report And Order And Memorandum Opinion And Order³ in CC Docket Nos. 96-98 and 95-185:

¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), codified as amendments to the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §151 et seq.

²47 C.F.R. §§51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), 51.717: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report And Order, 11 FCC Rcd 15499, 16016, 16027 (1996) (hereinafter "First R&O"); recon., 11 FCC Rcd 13042 (1996), second recon., 11 FCC Rcd 19738, third recon., 12 FCC Rcd 12460 (1997). It must be emphasized that these regulations were specifically upheld by the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") with respect to CMRS in Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997). Moreover, the FCC recently clarified these rules to confirm that local exchange carriers ("LEC's") cannot impose any charges on CMRS one-way paging providers for interconnection service or interconnection facilities used to deliver to paging service providers local telecommunications traffic that originates on the LEC's network. Letter To Mr. Keith Davis, et al., DA 97-2726 (Com.Car.Bur. December 30, 1997) (hereinafter "SW Bell Clarification Decision"); see also Letter To Ms. Kathleen A. Massey, et al., (Com.Car.Bur. March 3, 1997).

³47 C.F.R. §52.15. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, Second Report And Order And Memorandum Opinion And Order, 11 FCC Rcd 19392, 19537-19539 (1996) (hereinafter "Second R&O").

- Recurring charges for DID numbers, including NXX codes;
- Recurring charges for one-way trunks used to deliver LEC-originated traffic to the TSR Wireless CMRS one-way paging system;
- Charges for T-1 circuits used to deliver LEC-originated traffic to the TSR Wireless CMRS one-way paging system;
- Installation charges for such DID numbers, DID trunks and T-1 circuits;
- Other charges for interconnection services and/or facilities used solely to deliver one-way paging traffic from the LEC network for termination on the TSR Wireless CMRS one-way paging system.

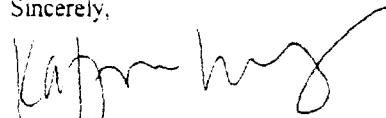
All prohibited interconnection charges must be terminated immediately. You are hereby advised that TSR Wireless will not pay any prohibited interconnection charges specified on any present or future invoice. It is TSR Wireless's intention to respond to any outstanding or future invoices from your company that include prohibited interconnection charges by issuing an additional letter confirming which charges specified on the invoice are prohibited and will not be paid and which charges on the invoice are permissible and will be paid.

In addition, any prohibited charges paid thus far by TSR Wireless and/or its predecessors-in-interest, TSR Paging and API, must be: (1) credited back to the September 30, 1996, effective date of the First R&O for all charges other than DID numbers charges;⁴ and (2) credited back to the October 7, 1996, effective date of the Second R&O for DID numbers charges.

Further, please note that the First R&O makes clear that TSR Wireless is entitled to reciprocal compensation for termination of LEC-originated one-way paging traffic.⁵ Pending TSR Wireless's submission to your company of TSR Wireless's request to negotiate revised terms and conditions for interconnection pursuant to Section 252 of the Act, this letter does not address these compensation rights.

If you have any questions with respect to this matter, please do not hesitate to contact me.

Sincerely,



Kathryn Murray
Director of Telecommunications

⁴ Certain regulations adopted in the First R&O were stayed by the Eighth Circuit. Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir. September 27, 1996) (Order granting temporary stay); id., No. 96-3321 (8th Cir. October 15, 1996) (Order Granting Stay Pending Judicial Review). That stay was lifted by the Eighth Circuit with respect to Sections 51.701, 51.703 and 51.717 of the FCC's Rules. Id., No. 96-3321 (8th Cir. November 1, 1996) (Order Lifting Stay In Part). Notwithstanding the stay, TSR Wireless believes that the above-specified types of charges addressed in the First R&O should be terminated as of September 30, 1996, because: (1) the language of the First R&O with respect to these charges was self-executing; and (2) now that the Eighth Circuit has affirmed these regulations as they apply to CMRS, relevant precedent requires that the subject charges are prohibited retroactive to the original effective date of the First R&O. see Middlewest Motor Freight Bureau v. U.S., 433 F.2d 212, 226, 242 (8th Cir. 1970), cert. denied, 402 U.S. 999 (1971).

⁵ 47 U.S.C. §251(b) (5); 47 C.F.R. §§51.701, 51.703(a), 51.717; First R&O, 11 FCC Red. at 16008-16053; SW Bell Clarification Decision, p. 2.

Attachment 2

Ameritech May 26 Letter

Ameritech.

Ameritech Corporate
Suite 270
225 West Randolph Street
Chicago, IL 60606
Office 312/727-2860
Fax 312/945-8871

Mark R. Ortlieb
Counsel

May 26, 1998

Ms. Kathryn Murray
Director of Telecommunications
TSR Wireless
400 Kelby Street
Fort Lee, NJ 07024

Re: TSR Wireless

Dear Ms. Murray:

I am in receipt of your letter to Lori Stencel of Ameritech dated May 4, 1998. Please be advised that TSR Wireless has ordered services from Ameritech to interconnect its paging system with the public switched network, and Ameritech has been billing TSR Wireless for those services pursuant to contract or tariff. Nothing in the Telecommunications Act of 1996 or the FCC rules promulgated thereunder, specifically 47 C.F.R. Section 51.703, abrogates the obligation of TSR Wireless to pay Ameritech for services which have been ordered and used by TSR Wireless.

Ameritech is aware of the terms of rule 703(b) and the letters written by various bureaus at FCC. However, neither the rule nor the letters change the basic fact that rule 703(b) does not impose an unconditional obligation on Ameritech to cease charging. Rather, it states that in the context of a negotiated interconnection arrangement under Section 251, each interconnected telecommunications carrier is responsible for bearing the cost of transporting traffic from its network to the interconnection point with another telecommunications carrier. In the context of those negotiations, major issues need to be resolved between Ameritech and TSR Wireless, including the location of the point of interconnection and the agreed-upon trunking arrangements for the interconnection of our networks. In Ameritech's view, it is simply not fair for TSR Wireless to order services from Ameritech (and thereby side-step any obligation to negotiate about trunking or the point of interconnection), and then to invoke the FCC's interconnection rules as authority to avoid payment for those ordered services.

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TSR Wireless

Please be advised that Ameritech expects TSR Wireless to pay all past due bills for the trunking services which have been provided by Ameritech and that Ameritech reserves all of its legal rights and options with respect to that debt.

Sincerely,



Mark R. Orllieb

Cc: Mike Karson
Jim Devine

Attachment 3

TSR Wireless June 5 Letter

RICHARD S. BECKER & ASSOCIATES

CHARTERED
1000 K STREET, N.W.
EIGHTH FLOOR
WASHINGTON, D.C. 20004

TEL: 202-333-4422

FAX: 202-333-4422
202-333-4422

ENGINEERING ENGINEER
SIAMAK HARANO
DEAKIN LAUER

AMERICAN BAR ASSOCIATION
JULY 1998
JAMES S. BECKER

June 5, 1998

VIA FAX MACHINE

Mark R. Ortlieb, Esquire
Ameritech
225 West Randolph Street
Suite 27B
Chicago, IL 60606
(312) 845-8871

Re: Commercial Mobile Radio Service
Interconnection For TSR Wireless LLC

Dear Mr. Ortlieb:

On behalf of our client, TSR Wireless LLC ("TSR Wireless"), we hereby respond to your letter dated May 26, 1998, to Ms. Kathryn Murray, Director of Telecommunications of TSR Wireless. Your May 26 letter responded to Ms. Murray's letter dated May 4, 1998 to Lori Stencel of Ameritech. By her May 4 letter, Ms. Murray advised Ameritech that certain types of charges for interconnection services and facilities imposed by Ameritech on TSR Wireless for use in connection with TSR Wireless's Commercial Mobile Radio Service ("CMRS") one-way paging operations violate the Telecommunications Act of 1996¹ and relevant Federal Communications Commission ("FCC") Rules and decisions. Ms. Murray made clear that TSR Wireless would not pay these charges and Ms. Murray requested credits for these charges back to the effective dates of relevant FCC decisions.

¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), codified as amendments to the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §151 et seq.

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In your letter, you stated that Ameritech rejected TSR Wireless's position. You made clear that Ameritech intended to continue imposing charges that TSR Wireless has shown violate FCC Rules and decisions and you stated that Ameritech expects TSR Wireless to continue to pay these prohibited charges. You specifically stated that, "[p]lease be advised that Ameritech expects TSR Wireless to pay all past due bills for the trunking services which have been provided by Ameritech and that Ameritech reserves all of its legal rights and options with respect to that debt."

Although not specified in your May 26 letter, TSR Wireless has also been advised by Ameritech that Ameritech is unilaterally refusing to provide additional interconnection services and/or facilities to TSR Wireless unless and until TSR Wireless negotiates, arbitrates (if necessary), and executes a new interconnection agreement with Ameritech pursuant to the provisions of Sections 251 and 252 of the Act.² This issue first arose in the specific context of Ameritech's decision to terminate all "reverse billing" service in the State of Wisconsin effective December 31, 1998.³ TSR Wireless is concerned about Ameritech's underlying decision to terminate reverse billing service and TSR Wireless is currently reviewing its options with respect to possible opposition to this Ameritech decision.

In the interim, however, TSR Wireless has been considering what actions it can take to ameliorate the significant, adverse consequences that Ameritech's termination of reverse billing service will cause to TSR Wireless paging subscribers. Specifically, TSR Wireless had hoped to obtain from Ameritech Type 2 NXX blocks of DID numbers for all Ameritech rate centers serving areas where TSR Wireless subscribers currently rely upon

²For ease of reference, the type of interconnection agreement requested by Ameritech will be referred to hereinafter as a "Section 252 Agreement."

³"Reverse billing", sometimes referred to by other local exchange carriers ("LEC's") as "wide-area calling," is a service provided by Ameritech pursuant to which a landline telephone subscriber can place a call to a TSR Wireless paging unit within LATA boundaries where the landline telephone subscriber pays only the normal local call charge. In the State of Wisconsin, TSR Wireless's predecessor-in-interest, American Paging, Inc. ("API"), has been obtaining reverse billing service for some time. TSR Wireless was advised that this reverse billing service will be terminated by Ameritech in Wisconsin no later than December 31, 1998.

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Ameritech's reverse billing service. [The NXX codes that TSR Wireless requires to ameliorate the adverse effects of Ameritech's termination of reverse billing will be referred to herein as the "New Codes."] Once TSR Wireless obtains the New Codes from Ameritech, TSR Wireless can reassign to TSR Wireless's reverse billing paging subscribers DID numbers that are local to each subscriber. This reassignment will, to some extent, allow the TSR Wireless paging subscriber to continue to receive service in a similar fashion to the service provided in conjunction with Ameritech's reverse billing service. This reassignment process will, however, require that the TSR Wireless paging subscriber change the telephone number assigned to its paging unit. As a result, TSR Wireless had hoped to obtain the New Codes and give TSR Wireless paging subscribers significant advance notice of the change in pager number that will result from Ameritech's termination of reverse billing as of December 31, 1998.

When TSR Wireless requested the New Codes, however, Ameritech advised TSR Wireless that Ameritech would under no circumstances provide the New Codes, or any new, modified or additional interconnection services or facilities, unless and until TSR Wireless executes a Section 252 Agreement with Ameritech. It is TSR Wireless's understanding that Ameritech's refusal to provide the New Codes is not the result of TSR Wireless's above-described refusal to pay charges for interconnection services and facilities that TSR Wireless believes are prohibited by the 1996 Act and FCC Rules and decisions. Rather, it is TSR Wireless's understanding that Ameritech's refusal to provide the New Codes is based on a separate rationale, i.e., that TSR Wireless must execute a Section 252 Agreement before Ameritech will provide any new, modified or additional interconnection services or facilities.

On behalf of TSR Wireless, we hereby strongly disagree with Ameritech's position on each of these issues.

First, the 1996 Act and relevant FCC Rules and decisions specifically prohibit the types of charges enumerated in Ms. Murray's May 4 letter. Specifically, Section 51.703(b) of the FCC's Rules provides that:

A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

47 C.F.R. §51.703(b).

Section 51.703(b) was adopted by the FCC in its August, 1996, Local

Competition Order. The FCC specifically stated that:

We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

Local Competition Order, 11 FCC Rcd at 16016 (emphasis added).

This and other FCC regulations governing interconnection of CMRS systems have been expressly upheld by the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") as valid interpretations by the FCC not only of Section 251(b)(5) of the Communications Act of 1934, as amended (the "Act") (as specified in the Local Competition Order), but also as valid interpretations of the various additional statutory provisions that provide the FCC with broad jurisdiction over CMRS.⁵ In point of fact, although the

"Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report And Order, 11 FCC Rcd 15499, 16016, 16027 (hereinafter "Local Competition Order"), recon. 11 FCC Rcd 13042 (1996), second recon., 11 FCC Rcd 19738 (1996), third recon., 12 FCC Rcd 12460 (1997), vacated in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997) (hereinafter "Iowa Utilities"), modified, 1997 U.S. Appeal, LEXIS 28652 (8th Cir. Oct. 14, 1997), cert. granted on other grounds, 66 USLW 3387 (U.S. Jan. 26, 1998 (Nos. 97-286, et al.).

⁵The Eighth Circuit held that:

Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rate charges by [CMRS] providers, ..., and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the commission has the authority to issue the rules of special concern to CMRS providers, i.e., 47 C.F.R. §§51.701, 51.703,

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Supreme Court has granted certiorari to review the Eighth Circuit's decision in Iowa Utilities, neither Ameritech nor any LEC has appealed the Eighth Circuit's affirmation of the FCC's CMRS interconnection regulations as they apply in the LEC-paging context.⁶

The FCC itself has repeatedly reiterated -- most recently on December 30, 1997 -- that the explicit language of 47 C.F.R. §51.703(b) prohibits imposition by LECs like Ameritech against CMRS paging carriers like TSR Wireless of any charges for local telecommunications traffic that originates on the LEC's network --

51.709(b), 51.711, 51.715(d) and 51.717, but only as these provisions apply to CMRS providers. Thus, rules 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context.

Iowa Utilities, 120 F.3d at n.21 (citations omitted).

The FCC itself made clear in the Local Competition Order the broad extent of its jurisdiction over CMRS interconnection when it held that:

Sections 251, 252, 332 and 201 are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable and fair. It is consistent with the broad authority of these provisions to hold that we may apply sections 251 and 252 to LEC-CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.

Local Competition Order, 11 FCC Rcd at 16005-16006.

⁶Iowa Utilities, 66 USLW 3387 (U.S. Jan. 26, 1993 (Nos. 97-286, et al.)).

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whether those charges are for traffic, facilities, or otherwise.⁷ In point of fact, 47 C.F.R. §51.703(b) is entirely consistent with other FCC regulations and provisions in the Local Competition Order.⁸

⁷Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau ("Bureau"), to Keith Davis, et al., 13 FCC Rcd 134 (Com.Car.Bur. 1997) ("December 30 Letter") ("the Commission's current rules do not allow a LEC to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network"); Letter from Regina M. Keeney, Chief of the Bureau, to Cathleen A. Massey, et al., (March 3, 1997) ("March 3 Letter") ("Because the 1934 Act defines the term 'telecommunications carrier' to include CMRS providers, a LEC is prohibited by section 51.703(b) from assessing charges on CMRS providers 'for local telecommunications traffic that originates on the LEC's network'").

⁸For example, Section 51.709(b) of the FCC's Rules provides, in relevant part, that:

The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

47 C.F.R. §51.709(b).

In the paging context, the providing carrier (Ameritech or other LEC) is providing transmission facilities to the interconnecting carrier (TSR Wireless or other CMRS one-way paging provider) and those facilities are being used **ONE HUNDRED PERCENT (100%)** to deliver traffic from the providing carrier's network to the interconnecting carrier's network. These transmission facilities are being used **ZERO PERCENT (0%)** to deliver traffic from the interconnecting carrier's network to the providing carrier's network. As a result, Section 51.709(b) supports Section 51.703(b) by making clear that in the case of facilities, all traffic flows from the LEC network to the paging carrier's network and as a result, the LEC may charge **ZERO PERCENT (0%)** for such facilities. In addition, in the Local Competition Order, the FCC explicitly addressed the issue of charges that a LEC may impose for facilities used to interconnect with the network of another telecommunications carrier. Specifically, the FCC stated:

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In light of these requirements, we hereby reiterate TSR Wireless's demand that Ameritech terminate the specified charges for interconnection services and facilities and provide credits to TSR Wireless back to the effective date of relevant FCC Rules as identified in Ms. Murray's May 4 letter. These charges are prohibited by FCC Rules and decisions. Ameritech's continuing refusal to comply with these requirements is unjustified. If Ameritech does not modify its position, TSR Wireless reserves all of its legal rights and options to redress Ameritech's violations, including, but not limited to, commencement of legal action against Ameritech before the FCC to obtain enforcement of these FCC Rules, as well as to seek damages against Ameritech and imposition of FCC sanctions against Ameritech.

Second, Ameritech's refusal to provide the New Codes to allow TSR Wireless to ameliorate the significant, adverse effects of Ameritech's unilateral decision to terminate reverse billing service is particularly egregious. On behalf of TSR Wireless, we hereby demand that Ameritech modify its position and provide the New Codes even though a Section 252 Agreement has not yet been executed by TSR Wireless.

In this regard, TSR Wireless readily admits that both CMRS paging carriers and LECs have an obligation to negotiate in good faith the terms and conditions of interconnection agreements like the Section 252 Agreement demanded by Ameritech.⁹ It is equally clear, however, that the interconnection regime adopted by the FCC pursuant to the 1996 Act is just, fair and reasonable and provides

For example, if the providing carrier [Ameritech or other LEC] provides one-way trunks that the interconnecting carrier [TSR Wireless or other CMRS one-way paging provider] uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic costs of those trunks. The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier.

Local Competition Order, 11 FCC Rcd at 16027.

Once again, Section 51.703(b) is entirely consistent with other portions of the FCC decision in the Local Competition Order.

⁹47 U.S.C. §251(c)(1).